

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KENNETH CREIGHTON,

Plaintiff,

-against-

THE CITY OF NEW YORK, DETECTIVE DEAN ROBERTS (Shield No. 05861), DETECTIVE GLENN GODINO (Shield No. 2756), POLICE OFFICERS JOHN DOES 1-10 (names being fictitious and presently unknown and intended to be employees of the NYPD who were involved in Plaintiff's arrest, detention, imprisonment, and/or prosecution), DISTRICT ATTORNEY ROBERT T. JOHNSON, ASSISTANT DISTRICT ATTORNEY BRUCE BIRNS A/K/A BURNS, ASSISTANT DISTRICT ATTORNEY ED TALTY a/k/a ED TULTY and ASSISTANT DISTRICT ATTORNEY MICHAEL COOPER,

Defendants.

**DECLARATION OF  
RICHARD GROSS**  
12 CIV 7454 (PGG)

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RICHARD GROSS declares the following under penalty of perjury pursuant to 28 U.S.C.

§1746:

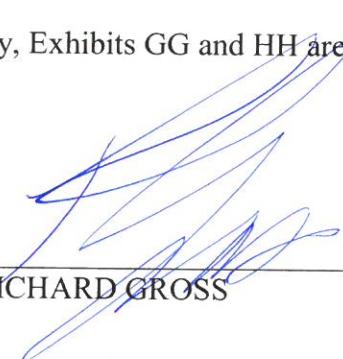
1. I am an attorney duly admitted to practice law in the State of New York and a member of the law firm of Rubert & Gross, P.C. Together with Pazer, Epstein & Jaffe, P.C., we represent plaintiff, Kenneth Creighton. As such, I am familiar with the facts and circumstances stated herein and submit this declaration in reply to defendants' Opposition to plaintiff's Motion for Partial Summary Judgment and in further support of same.

2. Annexed hereto as Exhibit A is a copy of the Recommendation of Dismissal dated January 18, 2012, signed by Theresa Gottlieb, demonstrating that Kenneth Creighton was arrested and charged upon the statements of a single eyewitness.

3. Annexed hereto as Exhibit B is a copy of an email received from ADA Burim Namani demonstrating that, as of May 27, 2016, Fawaz still denies ever identifying Kenneth Creighton from a surveillance video as the person that passed a gun to Dior Creighton.

4. Annexed hereto as Exhibit HH is a copy of a DD5 bearing Bates Stamp #P00025, which demonstrates that Kenneth Creighton was to be arrested for criminal facilitation and in turn plaintiff "may inform this Department" where Dior Creighton "is hiding out". This exhibit referenced in plaintiff Rule 56.1 Statement in support of his motion for summary judgment but the DD5 attached thereto is incorrect. Inadvertently, Exhibits GG and HH are duplicates.

Dated: July 26, 2016  
New York, New York



RICHARD GROSS

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX PT. 80

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

INDICTMENT NO. 639/2007

KENNETH CREIGHTON,

Defendant.

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RECOMMENDATION FOR DISMISSAL

PRELIMINARY STATEMENT:

Indictment Number 639/2007, filed February 9th, 2007, charged Kenneth Creighton with two counts of Criminal Possession of a Weapon in the Second Degree (P.L. § 265.03(1)(b) and P.L. § 265.03(3)) and Criminal Facilitation in the Second Degree (P.L. § 115.05).

FACTS AND PROCEDURAL HISTORY:

On December 26, 2006 at 5:48 P.M., defendant along with his brother Dior Creighton were inside a bodega at 800 East 168<sup>th</sup> Street. Defendant and Dior Creighton had a brief conversation. Defendant then handed Dior Creighton a handgun. Both men then left the bodega. Once outside, Dior Creighton fired several shots, hitting Lisette Ayala in the leg and John Cauldwell in the head, killing him. Kenneth Creighton was arrested on January 10, 2007 and bail was set at \$10,000. Defendant has been unable post bail and has remained incarcerated since his arrest.

Dior Creighton was arrested and charged (indictment 626/2007) with Murder in the Second Degree and Attempted Murder in the Second Degree. On January 3, 2012, Dior Creighton plead guilty to Attempted Murder in the Second Degree. He was sentenced on January

19, 2012, to 14 years in prison with 5 years post-release supervision.

**DEFENDANT'S CRIMINAL HISTORY:**

- 1) 10/6/2005 - Bronx County  
Attempted Robbery, 2<sup>nd</sup>. Degree (P.L. § 110/160.10(1))  
Sentence - 5 years probation
- 2) 10/6/2005 - Bronx County  
Petit Larceny (P.L. § 155.25)  
Sentence - Time served
- 3) 7/7/2006 - Bronx County  
Harassment , 2<sup>nd</sup>. Degree (P.L. § 240.26)  
Sentence - Conditional Discharge

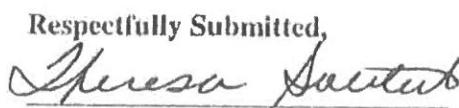
**REASON FOR RECOMMENDATION:**

Kenneth Creighton was arrested and charged based upon the statements of a single eyewitness. This eyewitness knows Kenneth Creighton and saw him hand Dior Creighton a handgun inside the bodega. This witness has now become unavailable to the Bronx District Attorney's Office. The witness could not be located by the case Detective at any of the telephone numbers or addresses provided. Further efforts to locate this witness by the Detective Investigator have been unsuccessful.

**CONCLUSION:**

Therefore, the People would be unable to proceed to trial.  
WHEREFORE, the indictment against **Kenneth Creighton** should be dismissed. No previous recommendation of this nature has been made to any court.

DATED:      **BRONX, NEW YORK**  
                  January 18, 2012

Respectfully Submitted,  
  
**Theresa Gottlieb**  
Assistant District Attorney  
Bronx County

# EXHIBIT B

**From:** Michael Jaffe  
**Sent:** Wednesday, June 1, 2016 11:39 AM  
**To:** 'Thadani, Kavin (Law)' <kthadani@law.nyc.gov>  
**Cc:** Richard Gross <richardgross.court@gmail.com>; Ernestine Mings <emings.rgpc@gmail.com>  
**Subject:** FW: Regarding People v. Kenneth Creighton 974/2016

Kavin,

Per our telephone conversation just now see below from the ADA on the current criminal case. I will send you hard copy with a cover letter as well.

Michael Jaffe  
Pazer Epstein & Jaffe, PC  
212-227-1212

Past President,  
New York State Trial Lawyers Association

Co-Chair, Labor Law Committee,  
New York State Trial Lawyers Association

<http://www.pazerandepstein.com>

----- Original Message -----

From: "Namani, Burim (BronxDA)" <[Namanib@bronxda.nyc.gov](mailto:Namanib@bronxda.nyc.gov)>

To: "[proth@rothlawnny.com](mailto:proth@rothlawnny.com)" <[proth@rothlawnny.com](mailto:proth@rothlawnny.com)>

Date: May 27, 2016 at 10:53 AM

Subject: Regarding People v. Kenneth Creighton 974/2016

Ms. Roth,

I am the Assistant District Attorney assigned to the case of People v. Kenneth Creighton, 974/2016, which is next on July 14, 2016 in Part 77. I am writing this email to provide you with some information regarding the complainant in this case, even though I believe you already have this information. The complainant in this case is Fawaz Tareb. At the time of Kenneth Creighton's Criminal Court arraignments, on March 8, 2016, you made the record that Fawaz Tareb is the "star witness" in the pending federal civil lawsuit that defendant Creighton has against NYPD and Bronx District Attorney's Office. It appears that Fawaz Tareb is a witness in the civil case and he was deposed on June 3, 2015 regarding that case. During the deposition on June 3, 2015, Mr. Tareb testified regarding an incident from December 26, 2006. However, I am informing you that Mr. Tareb's testimony on June 3, 2015 is inconsistent with statements made by Mr. Tareb to an Assistant District Attorney on August 9th, 2011. It is People's information that on August 9th 2011, inside 198 East 161st Street, Mr. Fareb identified Kenneth Creighton from a surveillance video as the person that passed a gun to Dior Creighton. At his

June 3, 2015, deposition, Mr. Tareb denied ever stating to an Assistant District Attorney that it was Kenneth Creighton that passed the gun. Mr. Tareb still denies making that statement on August 9th, 2015. Please contact me with any questions.

Sincerely,  
Burim Namani  
Assistant District Attorney  
Bronx County  
198 East 161s Street  
Bronx, NY 10451  
718.838.6153

# EXHIBIT HH

01/10/2007 13:56 71037888710

BX NIGHT WATCH

PAGE 01

Complete All Applicable Sections

DO NOT USE THIS FORM TO REPORT: CRIME CLASSIFICATION CHANGES, CASE CLEARNANCES, INITIAL ARREST ON THE COMPLAINT, RECOVERED PROPERTY, ADDITIONAL STOLEN PROPERTY, SERIAL NUMBERS OBTAINED FOR PROPERTY PREVIOUSLY REPORTED, CRIME INCIDENT DATA, USE COMPLAINT FOLLOW-UP (PD 313-081) TO REPORT THE PRECEDING.

COMPLAINT - FOLLOW UP INFORMATIONAL PD 313-081A (Rev. 4-89) 31				PAGE	OF	PAGE					
MURDER				Pct.	DCCB No.	Complaint No.	Date of This Report				
Date of Orig. Report	Date Assigned	Case No.	Unit Reporting	042		10734	06				
42-302 DDBX							1-10-07				
Complainant's Name - Last, First, M.I.,				Victim's Name - If Different							
Last Name, First, M.I.				Address, Include City, State, Zip				Apt. No.			
Home Telephone		Business Telephone		Position / Relationship		Sex	Race	Date of Birth	Age		
Total No. of Perpetrators		Wanted	Arrested	Weapon	Describe Weapon (If firearm, give color, make, caliber, type, model, etc.)						
1		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Used <input type="checkbox"/> Possessed							
Wanted		Arraigned	Last Name, First, M.I.	Address, Include City, State, Zip					Apt. No.	Res. Pct.	
XX			Crieghton Dior 818 Home street						8T	042	
Sex		Race	Date of Birth	Age	Height	Weight	Eye Color	Hair Color	Hair Length	Facial Hair	NYSID No.
M		BLK	12-06-87	n	m						3207631V
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description,									
Nickname, First Name, Alias		Scars, Marks, M.O., Etc.									
(Continue in "Details")											
Wanted		Arrested	Last Name, First, M.I.	Address, Include City, State, Zip					Apt. No.	Res. Pct.	
<input type="checkbox"/>		<input type="checkbox"/>									
Sex		Race	Date of Birth	Age	Height	Weight	Eye Color	Hair Color	Hair Length	Facial Hair	NYSID No.
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description,									
Nickname, First Name, Alias		Scars, Marks, M.O., Etc.									
(Continue in "Details")											
AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."											
Comp. Interviewed		In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different? (Explain in Details)					
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/> <input type="checkbox"/>					
Witness Interviewed		In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different? (Explain in Details)					
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/> <input type="checkbox"/>					
Canvas Conducted If Yes - Make Entry in Body As: Time, Date, Name, Address, Results				Crime Scene Visited		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained					
<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No							
PERP 1 Complainant Viewed Photos Results:											
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future											
PERP 2 Witness Viewed Photos Results:											
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future											
Crime Scene Dusted By (Enter Results in Details)				Crime Scene Photos		By (Enter Results in Details)					
<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No							
PERP 1 If Closing Case "No Results," Check Appropriate Box and State Justification in Details: C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence / Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant <input type="checkbox"/> C-5 "Leads" Exhausted											
PERP 2											
PERP 1 DETAILS: I card# I2007000054											
PERP 2											
PERP 1 1. U/S spoke w/ det Rivera BX vfs who informed me that deft's brother Kenneth Cieghton Nysid# 0264425N is suppose to be reporting to his probation officer on this date 1-10-07 at which time the 42 pct sqd. Detectives will arrest Kenneth on I-card# I2007000405 for criminal facilitation. In turn Kenneth may inform thhis Department wher deft- Dior Crieghton is hiding out.											
PERP 2 2. U/s is awaiting confirmation from Det Godino 42 pct Sqd, regarding above information.											
PERP 1 3. U/S and partner did canvass vicinity of. Perp's residence thrount the tour' but did not located deft- Dior Crieghton at this time.											
PERP 2											
CASE <input type="checkbox"/> ACTIVE <input type="checkbox"/> CLOSED				DATE REVIEWED/CLOSED 1/10/07				IF ACTIVE, DATE OF NEXT REVIEW			
REPORTING OFFICER: Det		RANK		SIGNATURE		NAME PRINTED La Duca.		TAX REG. NO. 887375		COMMAND DDBX	
REVIEWING / CLOSING SUPERVISOR:		CASE CLOSED: C _____ OR B _____		ENTER DESIGNATION		SIGNATURE O' McL		C.O.'s INITIALS			